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HOUSE BILL 905

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; AMENDING THE DEFINITION OF
"UNFAIR OR DECEPTIVE TRADE PRACTICE".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-12-2 NMSA 1978 (being Laws 1967,
Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS.--As used in the Unfair Practices
Act:

A. "person" means, where applicable, natural
persons, corporations, trusts, partnerships, associations,
cooperative associations, clubs, companies, firms, joint
ventures or syndicates;

B. "seller-initiated telephone sale" means a sale,
lease or rental of goods or services in which the seller or
[his] the seller's representative solicits the sale by

underscored material = new
[bracketed material] = delete

1 telephoning the prospective purchaser and in which the sale is
2 consummated entirely by telephone or mail, but does not include
3 a transaction:

4 (1) in which a person solicits a sale from a
5 prospective purchaser who has previously made an authorized
6 purchase from the seller's business; or

7 (2) in which the purchaser is accorded the
8 right of rescission by the provisions of the federal Consumer
9 Credit Protection Act, 15 U.S.C. 1635 or regulations issued
10 pursuant thereto;

11 C. "trade" or "commerce" includes the advertising,
12 offering for sale or distribution of any services and any
13 property and any other article, commodity or thing of value,
14 including any trade or commerce directly or indirectly
15 affecting the people of this state;

16 D. "unfair or deceptive trade practice" means an
17 act specifically declared unlawful pursuant to the Unfair
18 Practices Act or a false or misleading oral or written
19 statement, visual description or other representation of any
20 kind knowingly made in connection with the sale, lease, rental
21 or loan of goods or services, [~~or in the~~] extension of credit
22 or [~~in the~~] collection of debts by a person in the regular
23 course of [~~his~~] the person's trade or commerce [~~which may,~~
24 ~~tends to or does deceive or mislead any person~~] that deceives
25 or misleads and includes:

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1 (1) representing goods or services as those of
2 another when the goods or services are not the goods or
3 services of another;

4 (2) causing confusion or misunderstanding as
5 to the source, sponsorship, approval or certification of goods
6 or services;

7 (3) causing confusion or misunderstanding as
8 to affiliation, connection or association with or certification
9 by another;

10 (4) using deceptive representations or
11 designations of geographic origin in connection with goods or
12 services;

13 (5) representing that goods or services have
14 sponsorship, approval, characteristics, ingredients, uses,
15 benefits or quantities that they do not have or that a person
16 has a sponsorship, approval, status, affiliation or connection
17 that [~~he~~] the person does not have;

18 (6) representing that goods are original or
19 new if they are deteriorated, altered, reconditioned,
20 reclaimed, used or secondhand;

21 (7) representing that goods or services are of
22 a particular standard, quality or grade or that goods are of a
23 particular style or model if they are of another;

24 (8) disparaging the goods, services or
25 business of another by false or misleading representations;

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1 (9) offering goods or services with intent not
2 to supply them in the quantity requested by the prospective
3 buyer to the extent of the stock available, unless the
4 purchaser is purchasing for resale;

5 (10) offering goods or services with intent
6 not to supply reasonable expectable public demand;

7 (11) making false or misleading statements of
8 fact concerning the price of goods or services, the prices of
9 competitors or one's own price at a past or future time or the
10 reasons for, existence of or amounts of price reduction;

11 (12) making false or misleading statements of
12 fact for the purpose of obtaining appointments for the
13 demonstration, exhibition or other sales presentation of goods
14 or services;

15 (13) packaging goods for sale in a container
16 that bears a trademark or trade name identified with goods
17 formerly packaged in the container, without authorization,
18 unless the container is labeled or marked to disclaim a
19 connection between the contents and the trademark or trade
20 name;

21 (14) using exaggeration, innuendo or ambiguity
22 as to a material fact or failing to state a material fact if
23 doing so deceives or tends to deceive;

24 (15) stating that a transaction involves
25 rights, remedies or obligations that it does not involve;

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[bracketed material] = delete

1 (16) stating that services, replacements or
2 repairs are needed if they are not needed; or

3 (17) [~~failure~~] failing to deliver the quality
4 or quantity of goods or services contracted for; and

5 E. "unconscionable trade practice" means an act or
6 practice in connection with the sale, lease, rental or loan, or
7 in connection with the offering for sale, lease, rental or
8 loan, of any goods or services, including services provided by
9 licensed professionals, or in the extension of credit or in the
10 collection of debts which to a person's detriment:

11 (1) takes advantage of the lack of knowledge,
12 ability, experience or capacity of a person to a grossly unfair
13 degree; or

14 (2) results in a gross disparity between the
15 value received by a person and the price paid."